

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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LINDA SUE KASPER,

Plaintiff-Appellant,

v

TYLER DAVID RUPPRECHT,

Defendant-Appellee.

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UNPUBLISHED

January 23, 2014

No. 312919

Tuscola Circuit Court

LC No. 11-026722-NO

Before: STEPHENS, P.J., and M. J. KELLY and RIORDAN, JJ.

PER CURIAM.

Plaintiff, Linda Kasper, appeals as of right the trial court's order granting summary disposition in favor of defendant, Tyler Rupprecht, under MCR 2.116(C)(10). We affirm.

**I. FACTUAL BACKGROUND**

In September of 2008, plaintiff's daughter invited some friends over to plaintiff's house for a social gathering.<sup>1</sup> The guests were minors, including defendant, and they were consuming alcohol. Plaintiff was not home when the gathering started and claimed she had not given her daughter permission to invite people to the house. When plaintiff arrived home from a birthday party, she went to see who was present in the finished loft area above her garage. According to one of the members at the gathering, plaintiff was drunk and "rambling on about nonsense." Plaintiff denied that she was intoxicated.

Defendant thought plaintiff was acting "hilarious," so he used his cellular telephone to record her. Unfortunately, after the party dispersed, one of the guests was in a car accident. Thus, defendant turned the video over for use in a criminal investigation and the accompanying civil lawsuit stemming from the accident.

Plaintiff filed this instant litigation against defendant, alleging negligence per se in violation of MCL 750.539d and MCL 750.539h, contending that defendant used his cellular phone to record her in a private place and eavesdrop on her in a private place. She also alleged a

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<sup>1</sup> According to plaintiff, some of the guests were uninvited.

privacy tort, intrusion upon seclusion, and requested injunctive relief. Defendant eventually sought summary disposition under MCR 2.116(C)(10), contending that there was no genuine issue of material fact regarding plaintiff's privacy claim or a civil remedy under the statutory provisions. The trial court agreed, granting defendant's motion for summary disposition. Plaintiff now appeals.

## II. SUMMARY DISPOSITION

### A. STANDARDS OF REVIEW

We review a trial court's grant of summary disposition under MCR 2.116(C)(10) de novo. *MEEMIC Ins Co v DTE Energy Co*, 292 Mich App 278, 280; 807 NW2d 407 (2011). A motion for summary disposition under MCR 2.116(C)(10) "tests the factual support for a claim and should be granted if there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law." *Id.* "A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ." *West v Gen Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003). In reviewing a motion for summary disposition under MCR 2.116(C)(10), a court considers "affidavits, pleadings, depositions, admissions, and other documentary evidence submitted by the parties in the light most favorable to the party opposing the motion." *Greene v A P Prods, Ltd*, 475 Mich 502, 507; 717 NW2d 855 (2006) (internal quotations and citations omitted). This Court will consider only "what was properly presented to the trial court before its decision on the motion." *Pena v Ingham Co Rd Comm*, 255 Mich App 299, 310; 660 NW2d 351 (2003). "The interpretation and application of a statute is a question of law we review de novo." *Lewis v LeGrow*, 258 Mich App 175, 183; 670 NW2d 675 (2003)

### B. MCL 750.539d

The primary goal of statutory interpretation is to ascertain and effectuate the Legislature's intent. *Lewis*, 258 Mich App at 183. We begin with the words of the statute, and ascribe to them their plain and ordinary meaning. *Id.* If the language of the statute is clear and unambiguous, we enforce it as written, as no further judicial construction is permitted or necessary. *Id.*

In the instant matter, plaintiff alleged in her complaint that defendant violated MCL 750.539d, which provides that a person shall not "use in any private place, without the consent of the person of persons entitled to privacy in that place, any device for observing, recording, transmitting, photographing, or eavesdropping upon the sounds or events in that place." A person is prohibited from distributing or disseminating any such recording. MCL 750.539d(1)(b). Plaintiff also cited to MCL 750.539h, which states that "[a]ny parties to any conversation upon which eavesdropping is practiced contrary to this act shall be entitled to" civil remedies.<sup>2</sup>

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<sup>2</sup> Plaintiff invoked no other statutes as the basis for recovery in her complaint.

Eavesdropping, as defined in the statute, means “to overhear, record, amplify or transmit any part of the private discourse of others without the permission of all persons engaged in the discourse.” MCL 750.539a(2). However, because eavesdropping is limited to “the communication of *others* . . . a participant in a private conversation may record it without ‘eavesdropping’ because the conversation is not the ‘discourse of others.’” *Lewis*, 258 Mich App at 185 (emphasis in original).

Here, plaintiff entered the loft and saw her daughter with a number of friends. Plaintiff voluntarily engaged in conversation with them, replying to her daughter’s questions. Defendant was clearly visible, within a few feet of plaintiff, and was part of the group in front of which plaintiff was conversing. At the hearing on the motion for summary disposition, plaintiff’s counsel characterized her behavior as follows: “[She] walked in the room and engaged in conversation with her daughter’s friends as she probably had done maybe a couple hundred times in the years previously.” Because defendant was part of this colloquy, his filming did not constitute eavesdropping as he did not overhear or record the communication “of others.” MCL 750.539a(2); MCL 750.539d(1)(a); *Lewis*, 258 Mich App at 185.<sup>3</sup> Thus, summary disposition was properly granted in favor of defendant.

### C. INTRUSION UPON SECLUSION

Plaintiff also argues that the trial court erred in granting summary disposition on her intrusion upon seclusion claim. We disagree.

Intrusion upon seclusion is part of the common-law tort of invasion of privacy. *Lewis*, 258 Mich App at 193.<sup>4</sup> “There are three necessary elements to establish a prima facie case of intrusion upon seclusion: (1) the existence of a secret and private subject matter; (2) a right possessed by the plaintiff to keep that subject matter private; and (3) the obtaining of information about that subject matter through some method objectionable to a reasonable man.” *Dalley v Dykema Gossett*, 287 Mich App 296, 306; 788 NW2d 679 (2010). “An action for intrusion upon

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<sup>3</sup> Although the trial court did not espouse this reasoning, “this Court may affirm a trial court’s grant of summary disposition for reasons different than relied on by the trial court.” *Jackson Co Hog Producers v Consumers Power Co*, 234 Mich App 72, 86; 592 NW2d 112 (1999). Furthermore, while plaintiff argues that defendant’s conduct otherwise violated MCL 750.539d, as he recorded her in a private place without her consent, she fails to address the language in MCL 750.539h, which restricts civil remedies to situations “upon which *eavesdropping* is practiced. . . .” (Emphasis added); see *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998) (a party may not simply announce an error and leave it to this Court to unravel or strengthen her argument on appeal).

<sup>4</sup> The invasion of privacy tort “has evolved into four distinct tort theories: (1) the intrusion upon another’s seclusion or solitude, or into another’s private affairs; (2) a public disclosure of private facts about the individual; (3) publicity that places someone in a false light in the public eye; and (4) the appropriation of another’s likeness for the defendant’s advantage.” *Dalley v Dykema Gossett*, 287 Mich App 296, 306; 788 NW2d 679 (2010) (quotation marks and citation omitted).

seclusion focuses on the manner in which the information was obtained, not on the information's publication." *Lewis*, 258 Mich App at 193.

The subject matter of plaintiff's words and conduct was not secret or private. According to the members at the party, plaintiff discussed with them what she had been drinking that night. Plaintiff knew that she was responding in front of a group of people. Plaintiff volunteered relatively innocuous information about what she was drinking to a broad group of people, some of whom she apparently did not know well. There was no evidence that plaintiff reasonably expected this conversation to be private. See *Saldana v Kelsey-Hayes Co*, 178 Mich App 230, 235; 443 NW2d 382, 384 (1989) ("Also significant to the delimitation of the scope of privacy is whether the circumstances give rise to an expectation of privacy from the standpoint of the plaintiff.").

Further, the method of obtaining the information was not objectionable to a reasonable person. Defendant was within a few feet of plaintiff and was recording her with his cellular telephone. Nothing indicates that he was hiding the camera. In fact, there was testimony from the guests at the party that it was obvious he was filming plaintiff, although she did not notice.<sup>5</sup> This case does not involve surreptitious recording or photographing of an intimate act in a private setting. Rather, defendant was openly pointing a camera at plaintiff, who freely spoke in front of a broad group of people about her activities that night. Because a reasonable person could not find that the method of obtaining the information objectionable, summary disposition is proper.

### III. CONCLUSION

The trial court properly granted summary disposition in favor to defendant regarding plaintiff's claims based on MCL 750.539d and MCL 750.539h, as well as her claim based on intrusion upon seclusion. We affirm.

/s/ Cynthia Diane Stephens  
/s/ Michael J. Kelly  
/s/ Michael J. Riordan

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<sup>5</sup> While plaintiff claims the filming was "behind her back," she cites to no documentary evidence from the lower court to support this contention.